



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

DATED : 11.01.2022

CORAM :

C.R.P(MD)No.841 of 2017(PD)

and

C.M.P(MD)No.3747 of 2017

Mr.R.Padmaraja

... Petitioners/Petitioner
/Plaintiff

Vs.

1.Mrs.R.S.Padmarani

2.Mr.R.Reguram

3.Mrs.Rajeshwari

4.Ms.Mageshwari

... Respondents/Respondents
/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.03.2017 passed in I.A.No.396 of 2016 in O.S.No.123 of 2014 dated 23.03.2017 by the learned IV Additional District Judge, Madurai.

For Petitioners : Mr.T.C.S.Raja Chockalingam

For Respondent : Mr.S.Sivathilakar

O R D E R

This civil revision petition is filed to set aside the fair and decreetal order dated 23.03.2017 passed in I.A.No.396 of 2016 in O.S.No.123 of 2014 dated 23.03.2017 by the learned IV Additional District Judge, Madurai.

2.The petitioner is the plaintiff filed a suit in O.S.No.123 of 2014 before the IV Additional District, Madurai, for partition. During the pendency of the said suit, the petitioner filed an application in I.A.No.396 of 2016 under Order 32 Rule 3 and 15 r/w Section 151 of C.P.C, seeking appointment of Court guardian to represent the interest of the second respondent, who is a mentally infirm person. The said I.A was dismissed by the Trial Court. Challenging the said order, the petitioner has filed the present civil revision petition.

3.The learned counsel appearing for the petitioner would submit that though the second respondent, who is the father of the petitioner, is mentally retarded person, since he has taken treatment continuously for his mental illness, the petitioner filed a petition seeking to appoint Court guardian, but the trial Court failed to consider the petitioner's father is taking treatment and without even examining his father to ascertain his mental status and simply dismissed the petition filed by the petitioner. Hence, the



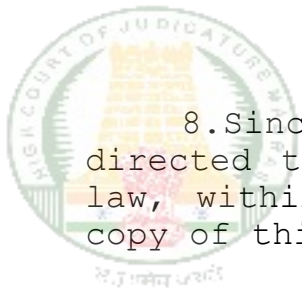
learned counsel prays that the order of the trial court is liable to be set aside.

4.The learned counsel appearing for the respondents would submit that earlier the petitioner and his mother filed a suit in O.S.No.124 of 2006 against the petitioner's father, wherein a preliminary decree was passed and subsequently, final decree application was also filed and the same was ended in compromise. In the earlier proceedings filed by the mother of the petitioner, nowhere stated that the second respondent/defendant is a mentally retarded person. As per the compromise decree, the petitioner got a valuable property. During the periods of contesting the preliminary decree and final decree, the petitioner has not whispered about the health condition of the second respondent. Even at the time of filing of the suit in the year 2014, the petitioner has not filed any such application and after two years, he filed an application and get fictitious relief. Hence, the learned counsel prays for dismissal of the civil revision petition.

5.Heard Mr.T.C.S.Raja Chockalingam, learned counsel appearing for the petitioner and Mr.S.Sivathilakar, learned appearing for the respondents.

6.Admittedly, the petitioner filed a suit in O.S.No.123 of 2014 against the four persons, wherein his father was shown as the second defendant. Even at the time of filing of the suit in the year 2014, he has not filed any application to represent the interest of the second defendant through next friend as a guardian and after two years only, he has filed this application. Even in the earlier suit proceedings, he has not stated anything about the health condition of the second respondent. The learned counsel appearing for the petitioner vehemently stated that the trial Court has not followed the rules prescribed under Order 32 Rule 3 and 15 of C.P.C and the trial Court also should have summoned the second respondent and ascertained the mental status and without following the statutory provisions, the trial Court has passed the impugned order. At the time of filing the earlier suit, the petitioner was a minor and after attaining majority, he has entered into compromise and he is also one of the parties to the compromise decree. When the petitioner filed the suit in the year 2014, he was major and he has not filed any such application to appoint a Court guardian or next friend to represent for the second respondent and after two years only, he had filed such application, which shows that the only intention of the petitioner to drag on the proceedings before the trial Court and to lead speculative litigation.

7.In view of the above, this Court does not find any merit in the revision and the same is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



8.Since the suit is pending from 2014, the Trial Court is directed to dispose of the suit on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The IV Additional District Judge,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Registrar Judicial,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.Sivathilakar,Advocate, SR.No. 1596 dated 12.01.2022

+1CC to Mr.T.C.S.Raja Chockalingam(Mr.M.Saravanan),Advocate, SR.No. 1358 dated 12.01.2022

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NA(CO)

KB(28.01.2022) 3P 7C